



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO Mr. and Mrs. Christoforo Russo

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Mr. and Mrs. Christoforo Russo for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "Mr. and Mrs. Russo" means Mr. Christoforo and Mrs. Josephine Russo, owners of the property at 2845 North Armistead Avenue in Hampton, Virginia.
5. "Order" means this document, also known as a Consent Special Order.
6. "Property" or "Site" means the 10.78 acre property owned by Mr. and Mrs. Russo, located at 2845 North Armistead Avenue in Hampton, Virginia, which consists of a developed strip mall shopping center and a rear open area containing uplands and palustrine forested wetlands.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "USACE" means the U.S. Army Corps of Engineers.
9. "Va. Code" means the Code of Virginia (1950), as amended.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. and Mrs. Russo, considered persons pursuant to 9 VAC 25-210-10, own the Property. The Property contains uplands as well as wetlands that connect to the Southwest Branch of the Back River and thereby the Back River and the Chesapeake Bay, state waters of the Commonwealth of Virginia.
2. On March 20, 2008 DEQ staff was contacted by City of Hampton staff regarding a potential wetland violation on the Property. On that date DEQ staff met City of Hampton staff on Site to investigate the potential violation. DEQ staff observed an approximately 3.5 acre area of fill material on the Site, later determined to have impacted 1.7 acres of wetlands. The fill material appeared to be approximately three feet high and consisted of soil, gravel, stumps, concrete rubble, cut trees, and woody debris. A tracked excavator was parked within the filled area. Areas adjacent to the western and southern side of the fill material exhibited typical undisturbed canopy and understory vegetation. The majority of the trees within the filled areas were dead and many appeared to have had their limbs removed. There was no scrub-shrub understory in the filled area.
3. Post-inspection, a review of aerial photographs provided by the USACE revealed that clearing and filling activities in the impacted wetland area appeared to have begun in 2005.
4. On April 18, 2008 DEQ staff met USACE staff on Site along with City of Hampton staff and Mr. Christoforo Russo. Mr. Russo explained that he was unaware he may have impacted wetlands. On inspection it was observed that the dead trees in the filled area had been and were being removed by a contractor hired by Mr. Russo.
5. Mr. and Mrs. Russo do not have a Virginia Water Protection Permit authorizing the fill activity on the Property.
6. The USACE issued a cease and desist letter on May 12, 2008. Mr. Russo has since stopped all fill and tree removal activities on the property.
7. Va. Code §62.1-44.15:20 states that except in compliance with VWP permit, it is unlawful to excavate in a wetland, or conduct the following activities in a wetland: (b) filling or dumping... (d) new activities that cause significant alteration or degradation of existing wetland acreage or functions. 9 VAC 25-210-50 (A) similarly states that except in compliance with a permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters, including wetlands.

8. On May 30, 2008 DEQ issued Notice of Violation No. 2008-05-T-001 to Mr. and Mrs. Christoforo Russo, advising of the above listed facts and applicable regulatory citations.
9. On June 6, 2008 Mr. Russo responded to the cease and desist letter through his agent, Stokes Environmental. The letter indicated that fill material had been delivered to the site continuously since 1975 when he purchased the property. The intended purpose of the work was to make the area available for expansion of the shopping center on the front of the property, which was constructed by Mr. and Mrs. Russo in 1989.
10. On June 24, 2008 DEQ Staff met with Mr. Russo, his sons Joseph and Salvatore Russo, representatives from Stokes Environmental, and USACE staff to discuss the alleged violations noted in the NOV. The Russo's admitted fault in the impacts to wetlands and expressed a willingness to work with DEQ to come into compliance.
11. Mr. and Mrs. Russo are in violation of Va. Code 62.1-44:15:20 and 9 VAC 25-210-50 for engaging in fill activity without a VWP permit which resulted in the significant alteration and degradation of existing wetlands acreage and functions.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. and Mrs. Russo, and Mr. and Mrs. Russo agree, to perform the actions described in the Appendix of this Order. In addition, the Board orders Mr. and Mrs. Russo, and Mr. and Mrs. Russo voluntarily agree, to pay a civil charge of \$10,400.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
P.O. Box 1104
Richmond, VA 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. and Mrs. Russo, for good cause shown by Mr. and Mrs. Russo, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Mr. and Mrs. Russo by DEQ on May 30, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent

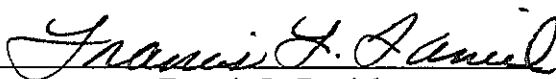
remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Mr. and Mrs. Russo admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. and Mrs. Russo consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. and Mrs. Russo declare they have received fair and due process under the Administrative Process Act, Va. Code §2.2-4000 *et seq.*, and the State Water Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. and Mrs. Russo to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. and Mrs. Russo shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. and Mrs. Russo shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Mr. and Mrs. Russo shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director or his designee, and Mr. and Mrs. Russo. Notwithstanding the foregoing, Mr. and Mrs. Russo agree to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. and Mrs. Russo. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. and Mrs. Russo from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By their signature below, Mr. and Mrs. Russo voluntarily agree to the issuance of this Order.

And it is so ORDERED this 17 day of October, 2008.


Francis L. Daniel

Mr. Christoforo Russo voluntarily agrees to the issuance of this Order.

By: 
Date: 8-18-08

Commonwealth of Virginia
City/County of Hampton

The foregoing document was signed and acknowledged before me this 18 day of Aug, 2008, by CRISTOFORO Russo, owner of
(name)
the Property.

James W. Grant
Notary Public

My commission expires:

March 31, 2009

Mrs. Josephine Russo voluntarily agrees to the issuance of this Order.

By: Josephine Russo

Date: 8-18-08

Commonwealth of Virginia

City/County of Hampton

The foregoing document was signed and acknowledged before me this 18th day of

August, 2008, by Josephine Russo, owner of
(name)

the Property.

James W. Grant
Notary Public

My commission expires:

March 31, 2009

APPENDIX

Mr. and Mrs. Russo shall:

1. Within 30 days of the effective date of this Order submit an approvable preservation and restoration plan and implementation schedule for the impacted wetland area specified in Section C.2 of this Order.
2. Initiate the final preservation and restoration plan and implementation schedule within 30 days of approval by DEQ staff.
3. Mail all submittals and reports required by this Appendix to:

Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462